Supreme Court, U.S.
FILED
MAY 18 1992
OFFICE OF THE CLERK

(1)

91-1858

No. _____

In The

Supreme Court of the United States

October Term, 1991

In re: BERNARD J. DOLENZ,

Petitioner,

PETITION FOR WRIT OF MANDAMUS

BERNARD J. DOLENZ
6102 Swiss Avenue
Dallas, TX 75214
(214) 821-0220
TX Bar No. 05957750
Petitioner, Pro Se

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
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QUESTIONS PRESENTED

1. DID THE TRIAL COURT ABUSE ITS DISCRETION IN STRIKING DOLENZ'S PLEADINGS WHEN A MOTION FOR PROTECTION WAS ON FILE TO QUASH THE PENDING DEPOSITION, THEREBY VIOLATING THE DUE PROCESS RIGHTS OF DOLENZ AS GUARANTEED BY THE U.S. CONSTITUTION, AMENDMENT V AND XIV, ARTICLE 1, SECTION 19 OF THE TEXAS CONSTITUTION?

2. DID THE TEXAS SUPREME COURT DENY DUE PROCESS OF LAW AS GUARANTEED BY THE U.S. CONSTITUTION, AMENDMENT V AND XIV AND THE TEXAS CONSTITUTION, ARTICLE 1, SECTION 19 IN NOT GRANTING LEAVE TO HEAR THE WRIT OF MANDAMUS WHEN TEXAS LAW IS CLEARLY IN DOLENZ'S FAVOR?

LIST OF PARTIES

1. The Honorable John McClellan Marshall, Judge of the 14th District Court, Dallas County, Texas 75201.

2. The Justices of the Texas Supreme Court whose names are unknown as their names do not appear on any record and the Clerk has indicated that their names are kept anonymous.

3. Real parties in interest are Brenda D. Lievrouw, 1517 Southfork Drive, Keller, Texas 76248; Nancy Vail, Administrator of the Dmitri Vail Estate, c/o Al Ellis, 900 Jackson Street, Suite 560, Dallas, Texas 75202; and Bernard J. Dolenz, 6102 Swiss Avenue, Dallas, Texas 75214.

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Transamerican Natural Gas Corp. v. Powell, 811 S.W. 2d 913 (Tex. 1991) 1, 3, 6, 7, 8

Walker v. The Honorable Anne Packer, Judge, in Original Mandamus Proceeding, Texas Supreme Court Journal, 468-488 2

MISCELLANEOUS:

Article 1, Section 19 of the Texas Constitution 5, 6, 7, 8, 9

Amendment V and XIV of the U.S. Constitution 5, 6, 7, 8, 9

12 Tex Jur 3d, Section 152 8

OPINIONS BELOW

1. The Court of Appeals, Fifth District at Dallas, denied Leave to File a Petition for Writ of Mandamus on December 5, 1991. Rehearing was denied on December 18, 1991.

2. The Supreme Court of Texas was then petitioned and it overruled the Motion for Leave on January 29, 1992. After several weeks before the Court, the rehearing Motion was denied on March 4, 1992.

3. The opinions complained about to the Courts on Mandamus regarding Judge Marshall are:

a. Order Granting Motion of Defendant/Third Party Plaintiff Dmitri Vail for Sanctions, signed November 25, 1991; and

b. Order Denying Motion for Rehearing Regarding Striking Dolenz's Pleadings, signed on December 5, 1991.

JURISDICTION

This Court has jurisdiction pursuant to Section 1651 (a) of Title 28 of the United States Code. There are exceptional circumstances that warrant the exercise of this Court's discretionary powers as adequate relief cannot be obtained in any other forum or in any other court.

The Texas Supreme Court in *Transamerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991), a similar case where "death penalty" sanctions were imposed during the discovery process, articulated a standard which defines when a trial court judge denies a litigant's due

process rights by striking the party's pleadings. When the Texas Supreme Court received other draconian death penalty sanctions during the discovery process about the same time that Dolenz's Leave was filed, the Texas Supreme Court seems to show its obsessive and somewhat confusing status in *Walker v. The Honorable Anne Packer, Judge*, in Original Mandamus Proceeding, Texas Supreme Court Journal, 468 – 488. Justice Lloyd Doggett discusses the double standard used by the Texas Supreme Court at 479 in *Walker*, supra, and states,

> "With a double standard, the majority strikes a devastating blow at the most direct method of curbing abuses of judicial power. Many judicial excesses far beyond the scope of anything alleged in this particular case will henceforth receive only an official nod and wink from the Texas Supreme Court.
>
> Mandamus is the legal tool by which appellate courts can promptly correct arbitrary and capricious ruling by trial judges. Today's opinion announces that this remedy will be available to support concealment of the truth but not its disclosure. Mandamus is officially declared a one-way street in the Texas courts – our judiciary can help to hide but not to detect.
>
> Despite a determination that a "clear abuse of discretion" has occurred in this particular case, ___ S.W.2d at ___, all relief is denied. Finding a wrong and denying a remedy echoes the logic of the majority's recent conclusion that a tax is unconstitutional but must be paid anyway. *See Carrolton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.* ___ S.W.2d ___, ___ (1992) (*Edgewood III*) (Doggett, J. dissenting). Rather

> than correcting the abuse, the Court simply gives the Walkers the same message it gave Texas taxpayers – wait. Only after a full jury trial based upon incomplete discovery will the judiciary even consider any possibility of relief . . . "

When the Texas Supreme Court would not grant Leave, it would mean that Dolenz would have to endure a full trial handicapped because he could not go into the merits of the case with the Vails asking over $500,000 in attorney fees plus damages for purported fraud, purported solicitation, purported legal malpractice, and purported violations of the Deceptive Trade Practices Act. This has the potential of "trashing" Dolenz as an attorney, as a Diplomate of the American Board of Neurology and Psychiatry, and may very well force Dolenz into bankruptcy all because the Marshall court has indicated that all the allegations are true and Dolenz is without recourse to defend himself pursuant to the guarantees given by the Texas and U.S. Constitutions dealing with due process. It is for this reason that this U.S. Supreme Court is requested to review this draconian result as Dolenz has not gotten adequate relief, even though the Texas Supreme Court in *Transamerican*, supra, has pointed out that Mandamus was an appropriate vehicle to correct such abuses of discretion.

In *Transamerican*, supra at 919, the Court analyzes that an effective appellate review is thwarted and that the eventual remedy by appeal is inadequate as one "must suffer a trial limited to damages claimed . . . The entire conduct of the litigation is skewed by removal of the merits of *Transamerican*'s position from consideration and

the risk that the trial court's sanctions will not be set aside on appeal . . . *we therefore hold that when a trial court imposes discovery sanctions which have the effect of precluding a decision on the merits of a party's claims – such as by striking pleadings, dismissing an action, or rendering default judgment – a party's remedy by eventual appeal is inadequate . . .* " (Emphasis added).

Furthermore, Vail died in December of 1991 and supposedly his causes of action died with him since they are personal in nature. The Marshall court refused to dismiss the causes of action, except that mental anguish was dismissed. *First National Bank of Kerrville v. Hackworth*, 673 S.W. 2d 218 (Tex App – San Antonio 1984, no writ) holds that all personal causes of action including exemplary damages and attorney fees die with the person.

STATEMENT OF FACTS

Dmitri Vail hired Dolenz to represent him in collecting his paintings. When Dmitri Vail married Nancy White, the attorney/client relationship deteriorated, with Dolenz being fired. Suit followed for collection of promissory notes owed to Dolenz for the rendition of legal services. When the notes were being sued for, Vail filed a third party action against Dolenz alleging legal malpractice, solicitation, deception, and other legal theories. This was twice summary-judgmented out, but when Al Ellis, a Past President of the Dallas Bar Association and involved

with various judiciary committees, came in as co-counsel, Judge Marshall reinstated the legal malpractice claims.

Even though Judge Marshall found Dmitri Vail in contempt of Court for a false affidavit, (EXHIBIT "A"), he refused to strike the pleadings of Dmitri Vail. There was false testimony given to the Court by Dmitri Vail's business manager and a Notary Public. In spite of this egregious conduct, the Court imposed "death penalty" sanctions against Dolenz when he did not appear for a third day of deposition which was:

a. Not agreed to;

b. The discovery order for completion had already passed EXHIBIT "B";

c. A Motion for Protection was before the Court before the deposition date;

d. Vail's attorney was advised of the Motion for Protection BEFORE the deposition date; and

e. Vail's attorney's office was advised before the proposed deposition time that Dolenz would not be present before the court ruled on his Motion for Protection.

When the Marshall court struck Dolenz's pleadings and deemed as true the allegations of Vail, in spite of Vail's being adjudged non compus mentis by Judge Marshall, (even though Vail was never served or represented or even appeared before Judge Marshall), Dolenz initiated his Mandamus actions, pointing out to the Trial Court earlier that his due process rights as guaranteed under Amendment V and XIV of the U.S. Constitution had been violated and that he should be permitted to proceed with the case by merit.

It appears that if one goes to the Court for protection that one should be protected without being subjected to penalties.

SUMMARY OF ARGUMENT

The Texas Supreme Court in *Transamerican*, supra, gives an analysis of the sanctions that a trial court may impose and indicates that there are constitutional limits on the powers of the court to dismiss an action without affording a party the opportunity for a hearing on the merits of the case. Dolenz contends that the trial court's striking of his pleadings was a violation of his due process rights which was pointed out timely to the Court.

Dolenz does not have an adequate remedy at law other than mandamus which is also confirmed by *Transamerican* at 919. Here, the law is clear in Dolenz's favor and the Texas Supreme Court refused to grant leave to hear the writ of mandamus.

This Court is sought to correct the errors of the trial court and the Texas Supreme Court to allow Dolenz the due process rights guaranteed him by the V and XIV Amendments of the U.S. Constitution and Article 1, Section 19 of the Texas Constitution.

ARGUMENT FOR BOTH QUESTIONS PRESENTED

Dolenz contends that the trial court abused its discretion by striking his pleadings when a Motion for Protection was before the Court to quash an opposed deposition

after the deadline for discovery had passed pursuant to the rules of Court. The due process objections were made timely to the trial court.

While the Texas Supreme Court in *Transamerican*, supra, indicates that one does not have an adequate remedy of law and that mandamus is an appropriate procedure under the circumstances for mandamus, the Texas Supreme Court denied Dolenz equal protection and due process as guaranteed by the Article 1, Section 19 of the Texas Constitution and Amendment V and XIV of the U.S. Constitution.

In *Transamerican*, supra at 918, the Texas Supreme Court allows a mandamus action for discovery abuse and holds that:

> "discovery sanctions cannot be used to adjudicate the merits of the party's claims or defenses unless a party's hindrance of the discovery process justifies a presumption that its claims or defenses lack merit. *Insurance Corporation of Ireland* 456 U.S. 694, 705-06, 102 S. Ct. 2099, 2105-06; *Rogers*, 357 U.S. at 209-210, 78 S. Ct. at 1094; *Hammond Packing* 212, U.S. at 350-351, 29 S. Ct. at 379-80 . . . Sanctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules".

Transamerican further holds at 917 that:

> " . . . just sanctions must not be excessive . . . the imposition of various severe sanctions is limited, not only be these standards, but by constitutional due process. The sanctions the

> district court imposed against *Transamerican* are the most devastating a trial court can assess against the party. When the trial court strikes a party's pleadings and dismisses its action or renders a default judgment against it for abuse of the discovery process, the court adjudicates the party's claims without regard to their merits but based instead upon the parties' conduct of discovery. "[T]here are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause". *Societe Internationale v. Rogers*, 357 U.S. 197, 209-210, 78 S. Ct 1087, 1094, 2 L. Ed 2d 1255 (1958), citing *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 350-51, 29 S. Ct. 370, 379-80, 53 L. Ed. 530 (1909), and *Hovey v. Elliott*, 167 U.S. 409, 17 S. Ct. 841, 42 L. Ed. 215 (1897); accord *Insurance Corp. of Ireland, Ltd, v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 705-06, 102 S. Ct. 2099, 2105-06, 72 L. Ed. 2d 492 (1982).

The law and equities seem clear that Dolenz has been denied his due process rights as guaranteed by the U.S. Constitution, Amendment V and XIV, but such guarantees are useless unless they are backed up. 12 Tex Jur 3d indicates that this applies to the Legislative as well as to the Judicial branches of state government, but such guarantees are useless unless they are backed up. 12 Tex Jur 3d, Section 152 regarding "STATE ACTION":

> The XIV Amendment to the U.S. Constitution provides, among other things, that no state may deprive any person of life, liberty, or property without due process of law. The federal guarantee of due process is a restraint upon all

> the departments of government – legislative, executive, and judicial – and binds every state official, high and low. Municipal ordinances adopted by state authority constitute "state action" within the prohibition of the XIV Amendment, as do the actions of school authorities in their official capacities. The Texas constitutional provisions that no citizen is to be deprived of life, liberty, property, privileges or immunity, or in any manner disfranchised, except by the due course of the law of the land, applies to the legislative as well as the judicial branch of state government.

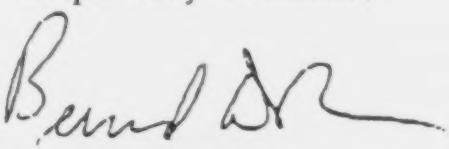
Regarding the Rodney King case and its aftermath, President Bush addressing the nation on May 1, 1992 indicated that due process rights would be guaranteed by the executive branch, but he failed to indicate just how. Here, the trial court and the Texas Supreme Court have failed seemingly in their sworn duties to uphold the due process rights of a Defendant and Dolenz prays that this Honorable U.S. Supreme Court will not fail in showing that the U.S. Constitution is meaningful and not just some paper for public relations purposes.

CONCLUSION

Petitioner Bernard J. Dolenz prays that this Honorable Court grant this extraordinary writ and that upon hearing of this writ will command the trial court and the Texas Supreme Court to fashion an appropriate remedy congruent with due process rights as guaranteed by the V and the XIV Amendments of the U.S. Constitution and allow Dolenz to proceed to trial ON THE MERITS and

that the striking of his pleadings and the Interlocutory Judgment be rescinded in the trial court and for general relief.

Respectfully submitted,



BERNARD J. DOLENZ
6102 Swiss Avenue
Dallas, TX 75214
(214) 821-0220
TX Bar No. 05957750
Petitioner, Pro Se

EXHIBIT A

CAUSE NO. 90-07760-A

BRENDA D. LIEVROUW	§	IN THE DISTRICT
	§	COURT OF DALLAS
v.	§	COUNTY, TEXAS 14TH
DMITRI VAIL	§	JUDICIAL DISTRICT

ORDER OF CONTEMPT

On this the 18 day of April, 1991, came on for consideration the motion for sanctions and show cause hearing ordered by the Court. The parties appeared by and through their respective attorneys of record. The Court after consideration of the pleadings, argument of counsel, and testimony of the witnesses is of the opinion that the Affidavit submitted by Dmitri Vail in response to the Motion for Summary Judgment filed by Brenda Lievrouw was submitted in bad faith and in violation of Rule 166(a).

The Court further finds that Dmitri Vail should be held in contempt of Court for having submitted the Affidavit in bad faith and imposes a fine of $500.00 to be paid within 10 days.

SO ORDERED AND SIGNED this 3 day of May, 1991.

/s/ John McClellan Marshall
PRESIDING JUDGE

EXHIBIT B

(SEAL)

14TH DISTRICT COURT
DALLAS COUNTY COURTHOUSE, 3RD FLOOR
600 COMMERCE STREET
DALLAS, TEXAS 75202-4606

Chambers of JUDGE JOHN MCCLELLAN MARSHALL

MAY 31, 1991

BERNARD DOLENZ
6102 SWISS AVE.
DALLAS TX 75214

RE: Case No. 9007760-A

LIEVROUW BRENDA D VS. VAIL DMITRI

All Counsel of Record:

Please take note of the following settings:

(1) All discovery shall be completed by JULY 27, 1991.

(2) All trial pleadings shall be filed by AUGUST 12, 1991.

(3) Pre-trial:

(4) Jury trial: 08/26/91

(5) Non Jury Trial:

Trial announcements must be made in accordance with rules 1.17 and 1.28, Dallas Civil Court rules.

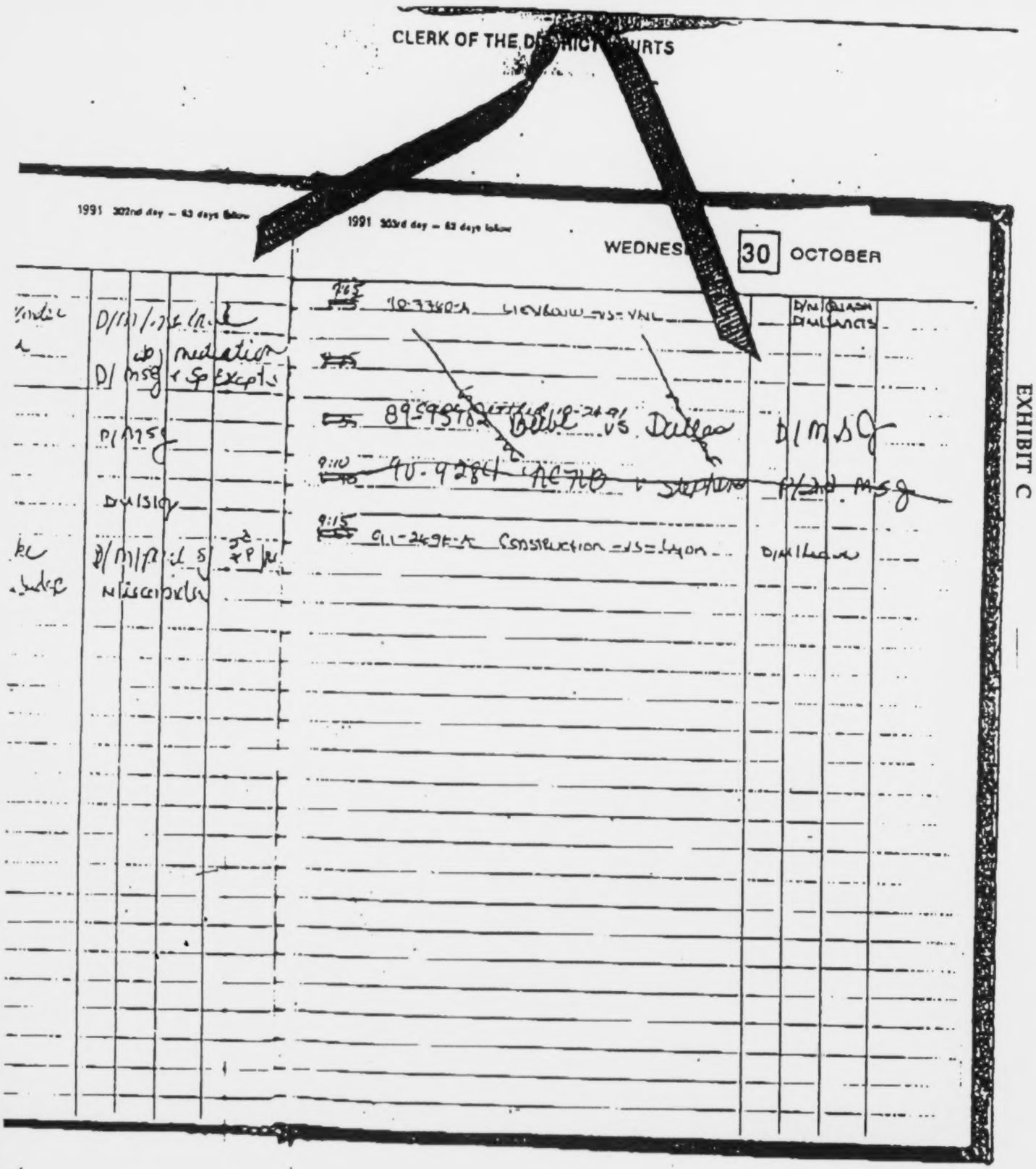
When no announcement is made for defendant, defendant will be presumed ready. If plaintiff fails to announce or to appear at trial, the case will be dismissed for want of prosecution in accordance with Rule 165a, Texas Rules of Civil Procedure.

Completion of discovery, presentation of pretrial motions and other matters relating to preparation for trial are governed by the Dallas Civil Court rules, printed at the back of the Texas Rules of Court published by West Publishing Co.

Sincerely,

JOHN MCCLELLAN MARSHALL
DISTRICT JUDGE
14TH DISTRICT COURT
Dallas County, Texas

EXHIBIT C



CLERK OF THE DISTRICT COURTS

1991 302nd day – 63 days follow

1991 303rd day – 62 days follow

WEDNES 30 OCTOBER

D/N Clash Dismissals

765 90-3360-A Glenbrook vs Vinc

89-9510 Bible vs Dutton D/Msg

9:10 90-9284 Acme + Stephens D/2nd Msg

9:15 91-269-A Construction vs Lyon D/Msg

D/Msg

D/Msg

EXHIBIT D

No. 90-07760-A

BRENDA D. LIEVROUW	§	IN THE DISTRICT
VS.	§	COURT OF DALLAS
	§	COUNTY, TEXAS 14TH
DMITRI VAIL	§	JUDICIAL DISTRICT
VS.	§	
	§	
BERNARD J. DOLENZ, M.D.	§	
	§	

ORDER GRANTING MOTION OF DEFENDANT/ THIRD PARTY PLAINTIFF DMITRI VAIL FOR SANCTIONS

On the 30th day of October, 1991, came on to be hard the Motion of the Defendant/Third Party Plaintiff Dmitri Vail for Sanctions.

All parties appeared through their attorneys of record, and the Court, having listened to the argument of counsel, is of the opinion that said Motion should be granted and that sanctions should be entered against the Third Party Defendant Bernard J. Dolenz, M.D. as requested by the Defendant/Third Party Plaintiff in paragraph VII, subparagraph three (3) of his Motion for Sanctions.

It is therefore ORDERED that the Motion of the Defendant/Third Party Plaintiff Dmitri Vail for Sanctions is granted, the pleadings of the Third Party Defendant Bernard J. Dolenz, M.D., are stricken, and the facts as alleged by the Third Party Plaintiff Dmitri Vail against the Third Party Defendant Bernard J. Dolenz in his Second Amended Original Cross Action are deemed to be

true as they pertain to the cause of action between Third Party Plaintiff Dmitri Vail and Third Party Defendant Bernard J. Dolenz, M.D. only.

This Order shall have no effect on the facts alleged by either party in the original lawsuit filed by the Plaintiff Brenda Lievrouw against the Defendant Dmitri Vail.

SIGNED this 25th day of November, 1991.

/s/ John McClellan Marshall
JUDGE PRESIDING

No. 90-07760-A

BRENDA D. LIEVROUW	§	IN THE DISTRICT
	§	COURT OF DALLAS
VS.	§	COUNTY, TEXAS 14TH
DMITRI VAIL	§	JUDICIAL DISTRICT
	§	
VS.	§	
	§	
BERNARD J. DOLENZ, M.D.	§	
	§	

ORDER DENYING MOTION FOR REHEARING REGARDING STRIKING DOLENZ'S PLEADINGS

On the 25th day of November, 1991, came on to be heard the Motion for Rehearing Regarding Striking Dolenz's Pleadings of the Third-Party Defendant Bernard J. Dolenz. All parties appeared through their attorneys of

record, and the Court having listened to the evidence and the argument of counsel is of the opinion that the Motion for Rehearing Regarding Striking Dolenz's Pleadings should be denied.

It is therefore ORDERED that the Motion for Rehearing Regarding Striking Dolenz's Pleadings of the Third-Party Defendant Bernard J. Dolenz is denied.

SIGNED this 5th day of December, 1991.

/s/ John McClellan Marshall
JUDGE PRESIDING

/s/ John McClellan Marshall

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

January 29, 1992

Dr. Bernard J. Dolenz
6102 Swiss Avenue
Dallas, TX 75214

Mr. Al Rochelle
25 Highland Park Village
Suite #294
Dallas, TX 75205

Mr. John E. Wall, Jr.
3109 Carlisle, Suite 103
Dallas, TX 75204

Mr. Alfred W. Ellis
Founders Square
900 Jackson Street
Suite 560
Dallas, TX 75202

RE: Case No. D-1915

Style: BERNARD J. DOLENZ
v. THE HONORABLE JOHN MCCLELLAN MARSHALL, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the above styled case. Motion to stay is also overruled.

Respectfully yours,

JOHN T. ADAMS, CLERK

BY: /s/ Michael C. Murphey
Michael C. Murphey,
Deputy Clerk

cc: Honorable John M. Marshall

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

March 4, 1992

Dr. Bernard J. Dolenz
6102 Swiss Avenue
Dallas, TX 75214

Mr. John E. Wall, Jr.
3109 Carlisle, Suite 103
Dallas, TX 75024

Mr. G. Murp Foote, Jr.
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Mr. Al Rochelle
25 Highland Park Village
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Dallas, TX 75205

Mr. Alfred W. Ellis
Founders Square
900 Jackson Street
Suite 560
Dallas, TX 75202

RE: Case No. D-1915

Style: BERNARD J. DOLENZ v. THE HONORABLE JOHN MCCLELLAN MARSHALL, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for rehearing of motion for leave to file petition for writ of mandamus in the above referenced case.

Sincerely,

JOHN T. ADAMS, Clerk

by /s/ Courtland Crocker
Courtland Crocker,
Deputy

cc: Honorable John M. Marshall

90-07760-A

BRENDA D. LIEVROUW

V.

DMITRI VAIL

V.

BERNARD J. DOLENZ,
THIRD PARTY
DEFENDANT

IN THE DISTRICT
COURT OF DALLAS
COUNTY, TEXAS 14TH
JUDICIAL DISTRICT

ORDER

On April 24, 1992, the Court heard Third Party Defendant, Bernard J. Dolenz's Motion to dismiss, and after reviewing the file, case law including FIRST NATIONAL BANK OF KERRVILLE V. HACKWORTH, 673 SW 2d 218 (Tex App – San Antonio 1984, no writ), and hearing arguments of counsel, the Court is of the opinion that the Motion to Dismiss be OVERRULED except that mental anguish be DISMISSED.

IT IS SO ORDERED.

SIGNED THIS THE 29th DAY OF APRIL, 1992.

/s/ John McClellan Marshall
JUDGE PRESIDING

90-07760-A

BRENDA D. LIEVROUW	§	IN THE DISTRICT
VS.	§	COURT OF DALLAS
	§	COUNTY, TEXAS 14TH
DMITRI VAIL	§	JUDICIAL DISTRICT
VS.	§	
	§	
BERNARD J. DOLENZ, M.D.	§	
	§	

INTERLOCUTORY JUDGMENT

On the 30th day of October, 1991, this Court heard the Motion of the Defendant/Third Party Plaintiff Dmitri Vail for Sanctions against the Third-Party Defendant Bernard J. Dolenz, M.D. On November 25, 1991, the Court signed an Order granting said Motion.

On November 25, 1991, the Court heard the Motion of Rehearing Regarding Striking Dolenz' Pleadings of the Third-Party Defendant Bernard J. Dolenz. On December 5, 1991, the Court signed an Order Denying said Motion.

The Third-Party Defendant Bernard J. Dolenz, M.D., field a Motion for Leave to File Petition for Writ of Mandamus in the Court of Appeals, Fifth District of Texas at Dallas, and said Motion was denied on December 5, 1991.

The Third-Party Defendant Bernard J. Dolenz, M.D., filed a Motion for Leave to File Petition for Writ of Mandamus with the Supreme Court of Texas, and said Motion was denied on January 29, 1992.

Nancy Vail, Temporary Administratrix of the Estate of Dmitri Vail, Deceased, has filed a Suggestion of Death

of Dmitri Vail on December 23, 1991. The Court has signed a Record of Suggestion of Death in this regard and has ordered that Nancy Vail, Temporary Administratrix of the Estate of Dmitri Vail, Deceased, be made Defendant/Cross-Plaintiff, and that this suit shall proceed accordingly.

It is now appropriate for an Interlocutory Judgment to be entered in favor of Nancy Vail, Temporary Administratrix of the Estate of Dmitri Vail, Deceased, and against the Third-Party Defendant, Bernard J. Dolenz, M.D.

It is therefore, ORDERED, ADJUDGED, AND DECREED, that the pleadings of the Third-Party Defendant Bernard J. Dolenz, M.D., are stricken, that the liability facts as alleged by the Third-Party Plaintiff Dmitri Vail against the Third-Party Defendant Bernard J. Dolenz, M.D., in his Second Amended Original Cross Action are deemed to be true as they pertain to the cause of action between Third Party Plaintiff Dmitri Vail and the Third-Party Defendant Bernard J. Dolenz, M.D., only.

It is further ORDERED, ADJUDGED, AND DECREED, that judgment be entered on the liability issues in said matter in favor of Nancy Vail, Temporary Administratrix of the Estate of Dmitri Vail, Deceased, and against Bernard J. Dolenz, M.D.

This Judgment shall have no effect on the facts alleged by any party in the original lawsuit filed by the Plaintiff Brenda Lievrouw against the Defendant Dmitri Vail.

SIGNED this 29th day of April, 1992.

/s/ John McClellan Marshall
JUDGE PRESIDING